



**STATE OF NEW JERSEY**

In the Matter of Bryan Lewis, Police  
Officer (S9999A), South Orange

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

CSC Docket No. 2021-1780

List Bypass Appeal

**ISSUED: DECEMBER 6, 2021 (SLK)**

Bryan Lewis appeals the bypass of his name on the Police Officer (S9999A), South Orange eligible list.

By way of background, the appellant, a nonveteran, appeared on the S9999A eligible list, which promulgated on May 15, 2020 and expires on May 14, 2022. The appellant’s name was certified on July 9, 2020 (OL200590) for a position in the subject title. The appellant, the ninth-positioned candidate was bypassed in favor of lower-ranked candidates who were appointed.

Initially on appeal, the appellant indicated that he did not receive any information to enable him to appeal his bypass.

In response, the appointing authority, represented by Kyle J. Trent, Esq., presents that the appellant was a Police Officer employed by North Plainfield from April 2014 to October 2019. The appellant indicated on his application that he had “resigned in good standing.” Further, the appellant confirmed that he had been subject to discipline and he had been previously discharged, terminated or asked to resign. The appellant described on his application that he had been the subject of departmental charges in 2019, which he described as being “dismissed and removed from the record.” However, the appointing authority’s background investigation revealed that his resignation was the result of a settlement dismissing serious charges in exchange for his resignation. The appointing authority presents that

North Plainfield's Police Department's Internal Affairs file indicates that the appellant was charged with Neglect of Duty, Untruthfulness and violating its Body Worn Camera Policy. The incident involved the appellant responding to a medical call for service of a female having difficulty breathing. Following the incident, an issue arose as to whether the appellant improperly turned off his Body Worn Camera as well as whether he rendered assistance to the patient. The investigation led to the appellant being charged with making untruthful statements to Internal Affairs as well as false statements in his police report.

Specifically, the investigation found that the appellant was not truthful when he stated in his report that when he arrived at the female patient's residence, he detected the odor of urine and feces. Additionally, the appellant stated over the police radio that he arrived with the rescue squad; however, the rescue squad indicated that it arrived after the appellant. Further, the appellant's body camera indicated that he was on the scene for two minutes and 34 seconds and he did not render aid to the female patient. During the Internal Affairs investigation, the appellant initially stated that he arrived at the same time of the rescue squad, but then later stated he did not enter the house with the rescue squad. It presents that the appellant admitted he violated several policies and he admitted that he did not go into the room where the patient was. Additionally, the appellant instructed a junior Police Officer to help the medical personnel with the patient. The appointing authority states that the appellant turned his body camera off when he met with the junior Police Officer and the appellant had previously been disciplined for violating the Body Worn Camera Policy. It notes that all administrative charges were dropped in accordance with the settlement agreement. The appointing authority presents that an additional Internal Affairs investigation questioned the appellant's credibility as he was asked if there were other officers on the scene with him at the call and he indicated that he did not remember. The investigator noted that the incident happened only a few weeks before the interview. The appointing authority asserts that the Internal Affairs files included substantial evidence demonstrating the appellant's untruthfulness, false reporting, and related misconduct during the incident. There were also inconsistencies between the video of the incident, the appellant's report, and his Internal Affairs investigation statement, which raised concerns about the appellant's truthfulness and suitability to serve as a law enforcement officer.

Additionally, the appointing authority presents that the appellant's application raised other concerns such as him indicating that he used marijuana during college approximately 10 times. Further, the appellant acknowledged that he used a "mushroom" on one occasion in 2019. It notes that the appellant was employed as a Police Officer in 2019. However, when interviewed, the appellant stated that he made a mistake and he meant to write that he used mushrooms during college. Given that the appellant specifically identified his marijuana use as being during college, the appointing authority questions how he could have made a mistake when he indicated that he used mushrooms in 2019. Therefore, the appointing authority believes that either the appellant was untruthful when questioned by the investigator

or incapable of preparing a true and accurate report. Further, based on the appellant's prior unsuccessful employment in law enforcement and concerns about his truthfulness arising from his prior employment and his application, the appointing authority chose to use its discretion under the Rule of Three and bypass him and appoint two lower ranked candidates who did not present the same concerns as the appellant. It also believes that other municipalities shared the same concerns as the appellant indicated on his application dozens of other law enforcement positions that he applied for since the end of his employment.

Concerning the appellant's appeal, the appointing authority indicates that under Civil Service rule and law, it had no obligation to provide him any information regarding his bypass until he appealed. Additionally, it asserts that the appellant cannot meet his burden that its decision to bypass his name was unlawful, arbitrary or capricious as he has not presented any evidence that indicates that its decision to bypass him was improper as the appellant's background does not demonstrate that he can meet the high standards of a Police Officer. Moreover, the appointing authority contends that the appellant's application and interview where he claimed that he made a mistake on his application by indicating that he used mushrooms in 2019 instead of in college either demonstrates that he is untruthful or cannot prepare true and accurate documents, which in either case demonstrates that he lacks the suitability to serve as a Police Officer and justifies its ability to bypass him.<sup>1</sup>

In reply, the appellant states that the North Plainfield Police Department violated every provision that was agreed upon. He presents that these files were dismissed and removed upon signing the agreement in April 2019 before a Judge. Therefore, the appellant contends that these files should not exist and that the appointing authority's investigators were "well aware" of this. He asserts that he provided all documentation and evidence to the appointing authority that was requested of him. Therefore, the appellant argues that he is being "discriminated" against by the appointing authority based on information that was never proven to be true and information that was never supposed to exist. He believes that his qualifications far exceed any of the hired candidates as he has been a Police Officer for six years with a "great track record." The appellant emphasizes that he has no criminal history and received numerous awards and commendations from his supervisor for his outstanding performance as a Police Officer. He states that the

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<sup>1</sup> The background report also indicates that the appellant had three motor vehicle summonses between 2007 and 2010 and six motor vehicle accidents between 2011 and 2019, including 2015 and 2016 accidents while in a North Plainfield Police Department Vehicle. Further, the background report indicates that the appellant had 12 Internal Affairs complaints against him. Additionally, in response to question 75 on the application, the appellant indicated that he had never been rejected from any law enforcement position. It is noted that the appellant indicated a number of applications to law enforcement agencies that were "out of process." Finally, in response to question 79 on the application, the appellant indicated that he had been subject to disciplinary actions. In the additional information section, the appellant indicated, referring to the North Plainfield discipline in question in this appeal, that the charges were dismissed and removed from his record.

appointing authority is trying to paint an image of him being unfit for the position, which is untrue. The appellant reiterates that he was well respected among his peers and his fellow officers would vouch for him.

The appellant submits his settlement agreement with North Plainfield. The agreement indicates that the appellant resigned in good standing effective October 4, 2019. Further, the Final Notice of Charges served on him April 4, 2019, were dismissed and the sustained November 19, 2018, disciplinary action served on the appellant and corresponding investigation was to be withdrawn. Also, all pending and past Internal Affairs complaints and investigations against the appellant were to be dismissed and removed from his personnel file. Additionally, North Plainfield agreed to remove the appellant from the Early Warning System, to not interfere with present and future attempts by the appellant to seek employment with another law enforcement agency, to advise prospective employers that he resigned in good standing for personal reasons, and to seal his personnel record.

The appellant also submits a 2015 Distinguished Service Award he received from the North Plainfield Police Department, a 2011 Certificate of Appreciation he received from the Livingston Police Department, a 2014 "thank you" letter from the Essex County Sheriff's Department, a 2016 and two 2017 Letters of Commendation from the North Plainfield Police Department, three 2016 Unit Citations from the North Plainfield Police Department, a 2017 Honorable Service award from the North Plainfield Police Department, and a 2017 Performance Notice that commended the appellant for his work with the North Plainfield Police Department.

In further response, the appointing authority states that it is irrelevant whether North Plainfield violated the settlement agreement in question. It contends that compliance with the settlement agreement is not properly raised in this forum. The appointing authority presents that there is a difference between a personnel file and an Internal Affairs file and the appellant previously acknowledged this in an email to it. It highlights that Attorney General Guidelines required North Plainfield to keep an Internal Affairs file separate from an employee's personnel file.

The appointing authority indicates that it was obligated to review the appellant's Internal Affairs file under an Attorney General's Directive and obtained a waiver from the appellant to do so. Further, it notes that the appellant was aware of this as his prior counsel wrote North Plainfield requesting that his records be unsealed. Therefore, the appointing authority asserts that the appellant's statement that it acted improperly in reviewing his Internal Affairs file is meritless.

The appointing authority argues that the appellant cannot satisfy his burden to demonstrate that the bypass was unlawful, arbitrary or capricious. It contends that the appellant has not presented any improper basis underlying its decision to bypass him. The appointing authority emphasizes that it had valid and proper concerns to bypass him based on his background, experience, character and interview

performance. It believes that the fact that the appellant previously worked as a Police Officer and was forced to resign as part of a settlement of disciplinary charges should end the need for any further analysis. The appointing authority states that it is not trying to “paint” the appellant as unfit to be a Police Officer. Instead, the appellant’s unsuccessful career with North Plainfield demonstrates this, which is sufficient for it to bypass him and pursue other candidates without such a negative history. It asserts that the appellant’s purported “awards” or “rewards” prior to the Internal Affairs issues do not alter this. The appointing authority states that the appellant makes no efforts to address his untruthful or inaccurate reporting which was demonstrated during his application with it. It argues that the appellant’s application and interview “explanation” related to his drug use also confirms that its decision to bypass him was valid. The appointing authority reiterates that the appellant’s claim that his written statement that he used mushrooms in 2019 was a mistake and he actually used them in college either demonstrates that he is untruthful or cannot prepare true and accurate documents, which in either case, justifies its decision to bypass him.

In further reply, the appellant submits a newspaper article that indicates that he filed a lawsuit against his former supervisors claiming that they forced him out of his job and then blacklisted him. The suit also accuses his former attorney of legal malpractice by “deviating from the standard of care” by advising him to resign instead of defending him at a disciplinary hearing to help him keep his job.

## CONCLUSION

*N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7 and *N.J.A.C.* 4A:4-4.8(a)3i allow an appointing authority to select any of the top three interested eligibles on an open competitive list provided no veteran heads the list. Additionally, *N.J.A.C.* 4A:2-1.4(c) provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to bypass the appellant from an eligible list was improper.

*N.J.A.C.* 4A:4-4.7(b)1 provides that an appointing authority that requests removal of an eligible’s name from a list shall submit to an appropriate representative of the Civil Service Commission (Commission), no later than the date for disposition of the certification, all documents and argument upon which it bases its request. Upon request of the eligible or upon the eligible’s appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative.

Initially, it is noted that under *N.J.A.C.* 4A:4-4.7(b)1, the appointing authority had no obligation to provide the appellant the reason for his bypass prior to his appeal. However, once the appellant appealed, the appointing authority had the obligation to provide the reason, which it did.

In cases of this nature, where dual motives are asserted for an employer's actions, an analysis of the competing justifications to ascertain the actual reason underlying the action is warranted. *See Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990). In *Jamison*, *supra* at 445, the Court outlined the burden of proof necessary to establish discriminatory and/or retaliatory motivation in employment matters. Specifically, the initial burden of proof in such a case rests on the complainant who must establish discrimination or retaliation by a preponderance of the evidence. Once a *prima facie* showing has been made, the burden of going forward, but not the burden of persuasion, shifts to the employer to articulate a legitimate non-discriminatory or non-retaliatory reason for the decision.

If the employer produces evidence to meet its burden, the complainant may still prevail if he or she shows that the proffered reasons are pretextual or that the improper reason more likely motivated the employer. Should the employee sustain this burden, he or she has established a presumption of discriminatory or retaliatory intent. The burden of proof then shifts to the employer to prove that the adverse action would have taken place regardless of the motive.

In the instant matter, it was within the appointing authority's discretion to select any of the top three interested eligibles for each appointment. Nevertheless, the appellant alleges that the appointing authority "discriminated" against him by bypassing him based on information that was never proven to be true and information that was never supposed to exist. He believes that his qualifications far exceed any of the hired candidates as he has been a Police Officer for six years with a "great track record."

In response to the appellant's allegations, the appointing authority submitted its background investigation that revealed that the appellant was issued serious charges from his prior employer as a Police Officer due to an incident and the charges were dismissed pursuant to a settlement. The investigation also indicated that the appellant indicated on his application that he was a recent drug user although during the investigation the appellant claimed he made a mistake and that he only used drugs in college. Therefore, the appointing authority concluded that either the appellant was untruthful during the investigation or he was incapable of preparing an accurate report. Therefore, the appointing authority determined that the appellant's name should be bypassed in favor of lower-ranked candidates whose background did not contain such concerns.

It is noted that the appointing authority was not a party to the settlement between the appellant and North Plainfield. As such, the settlement agreement in question did not preclude the appointing authority from using the appellant's disciplinary history to bypass him for a Police Officer position. *See In the Matter of Paul De Marco* (MSB, decided April 6, 2005). Additionally, concerning any statements by the appellant that the appointing authority should not have been able

to review his North Plainfield Internal Affairs file, the record indicates that under Attorney General Guidelines and Directives, North Plainfield was required to keep an Internal Affairs file for the appellant that was separate from his personnel file, and the appointing authority was obligated to review the appellant's Internal Affairs file when considering him for employment as a Police Officer. Moreover, the appellant's prior attorney asked North Plainfield to amend the settlement in question to authorize prospective law enforcement agencies to review the appellant's employment records, the appellant signed a release authorizing that his employment records from North Plainfield be released to the appointing authority, and the appellant emailed the investigator advising him that his North Plainfield records were unsealed, and he should have access to it. Further, the appellant's claim that the appointing authority's decision to bypass him was "discriminatory" is misplaced as he has not made an allegation that the appointing authority chose to bypass him based on his membership in a protected category such as race, religion or other protected class. Additionally, there is nothing unlawful or invidious about an appointing authority choosing to bypass a candidate who has recently been accused by his previous employer of serious misconduct as a Police Officer in favor of lower-ranked candidates who do have the same concerns. Moreover, the appellant could have chosen to challenge his discipline in attempt to exonerate his record, but instead chose to settle matter.<sup>2</sup> Therefore, while the appellant argues that the charges against him were unproven, there is also nothing in the record that indicates that the allegations were without merit as the appellant chose to resign in the face of discipline. It is noted that resignation in the face of discipline is sufficient for a bypass from an eligible list. *See In the Matter of Amy Harrison* (MSB, decided April 9, 2008). Further, the fact that the appellant claims that he only resigned due to his attorney's advice, which he claims was malpractice, has no bearing on the appointing authority's decision to remove him as it made its decision based on the record before it at the time it made its decision.

In addition to concerns about the appellant's employment history, the appointing authority had legitimate concerns about the appellant's ability to be truthful. Specifically, the appellant indicated that he used "mushrooms" in 2019, which would have been while he served as Police Officer. Thereafter, when questioned about this, the appellant indicated that he made a "mistake" and his mushroom usage was in college. However, the Commission finds that it is unlikely that the appellant would have made such a "mistake." Regardless, even if he did, it is noted that candidates are responsible for the accuracy of their applications. *See In the Matter of Harry Hunter* (MSB, decided December 1, 2004).

Concerning the appellant's belief that he is more qualified than the appointed candidates, even assuming, *arguendo*, that the appellant was more qualified than the

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<sup>2</sup> Although North Plainfield is not a Civil Service jurisdiction, the appellant could have chosen to challenge the matter through whatever disciplinary process he was afforded by North Plainfield, or if none was available, through the Courts.

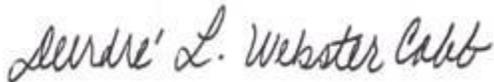
appointed candidates, as he has not presented any evidence that his bypass was based on an unlawful motive, the appointing authority's actions were within its discretion under the "Rule of Three." See *In the Matter of Michael Cervino* (MSB, decided June 9, 2004). Finally, even discounting the incident in the settlement, it is noted that the appointing authority may have been able to bypass the appellant's name from the list for falsification or other reasons.<sup>3</sup> See *N.J.A.C.* 4A:4-6.1(a)6 and (a)9; and *N.J.A.C.* 4A:4-4.7(a)11.

### ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF DECEMBER 2021



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: Bryan Lewis  
Adam D. Loehner  
Kyle J. Trent, Esq.  
Division of Agency Services

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<sup>3</sup> In addition to the appellant's "mistake" regarding his drug use, the appellant indicated that he was never rejected from any government position, yet he mentioned many jurisdictions where he applied, and his applications were "out of process." Further, the appellant's employment history indicated that he had prior discipline and Internal Affairs complaints and/or an unsatisfactory driving record, which included motor vehicle violations and recent accidents, including while serving as a Police Officer. Depending upon the circumstances, any of these issues could support a candidate's bypass from a law enforcement eligible list.